

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

NORMAN PETERSON, a/k/a NORMAN CAREY,

Defendant-Appellant.

UNPUBLISHED

January 4, 2000

No. 212445

Kalamazoo Circuit Court

LC No. 95-000502 FC

Before: Saad, P.J., and McDonald and Gage, JJ.

PER CURIAM.

Defendant appeals as of right from his sentences for probation violation following plea-based convictions of two counts of criminal sexual conduct in the second degree (CSC II), MCL 750.520c; MSA 28.788(3). We affirm.

Defendant pleaded guilty to two counts of CSC II in return for the dismissal of two counts of criminal sexual conduct in the first degree, MCL 750.520b; MSA 28.788(2). On July 31, 1995 the court sentenced defendant to five years' probation. On April 17, 1998 defendant pleaded guilty to violating his probation by failing to complete a treatment program. At sentencing, defendant objected to statements in the presentence report to the effect that his grandmother made excuses for him and gave him advice that contradicted his probation agent's advice, and that he purchased cigarettes for minors. The court declined to remove the statement regarding defendant's grandmother, finding it to be the author's characterization of the grandmother's actions. The court accepted defendant's assertion that he had not purchased cigarettes for minors, and crossed out that portion of the report. The court sentenced defendant to concurrent terms of one and one-half to fifteen years in prison, with credit for forty-two days. Subsequently, the court denied defendant's motion to correct the presentence report and for resentencing.

Defendant argues that he is entitled to resentencing because the court relied on inaccurate information when imposing sentence, and because the sentences are disproportionate to his circumstances and to those of the offense. We disagree and affirm. A defendant is entitled to be sentenced on the basis of accurate information. *People v Lee*, 391 Mich 618, 639; 218 NW2d 655 (1974). Either party may challenge the accuracy or relevancy of information in the presentence report.

MCL 771.14(5); MSA 28.1144(5). The sentencing court has a duty to respond to challenges to the accuracy of information in the report. *People v Sutton*, 158 Mich App 755, 761; 405 NW2d 209 (1987). Here, defendant objected to the accuracy of information regarding his grandmother's actions on his behalf. The author of the presentence report spoke with other persons involved in defendant's case, and couched his characterization of defendant's grandmother's behavior in terms of what was reported to him. A presentence report must contain information regarding the defendant's social history. MCR 6.425(A)(4). The trial court correctly declined to remove this and other information that characterized defendant's behavior.

Finally, we hold that defendant's sentences are not disproportionate to his circumstances or to those of the offenses. *People v Milbourn*, 435 Mich 630, 636; 461 NW2d 1 (1990). The sentencing guidelines do not apply to probation violators. *People v Williams*, 223 Mich App 409, 412; 566 NW2d 649 (1997). The key test of the proportionality of a sentence is whether it reflects the seriousness of the matter. *People v Houston*, 448 Mich 312, 320; 532 NW2d 508 (1995). Defendant had a prior record, including a conviction of assault and battery. He repeatedly failed to comply with the terms of his probation. His sentences did not constitute an abuse of discretion under the circumstances. *Id.* Defendant was not eligible to be sentenced as a juvenile under MCR 6.901 *et seq.* because he committed the instant offenses after he turned seventeen years of age. MCR 6.903(D).

Affirmed.

/s/ Henry William Saad

/s/ Gary R. McDonald

/s/ Hilda R. Gage